



Approved

June 20, 2006

**EAST GALLATIN
ZONING REGULATION**

Citizen Advisory Committee:

Dan Alderman
Doug Fletcher
Patrick Byorth
Patricia Freund
John McKenna
Kevin Olmstead
Joe Sabatini
Gary Thompson
Steve Wallingford

Planning Staff:
Gallatin County Planning Department

Adopted: June 20, 2006 _____
Resolution #2006-062

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	
SECTION 1 GENERAL PROVISIONS	2
SECTION 2 APPLICATION OF DISTRICT REGULATIONS	5
SECTION 3 ZONING PROVISIONS	
Agricultural and Rural (AR) Residential District	6
<u>Neighborhood Commercial (NC) District</u>	8
<u>Commercial (C) District</u>	9
SECTION 4 DEVELOPMENT STANDARDS	10
Subdivision Standards	10
Clustered Development Criteria	8
Bed & Breakfast Inn	11
Home-based Business	11
Home Occupation	12
Setbacks	12
SECTION 5 ADMINISTRATIVE PROVISIONS	13
SECTION 6 NON-CONFORMING LOTS, USES & STRUCTURES	15
SECTION 7 LAND USE PERMITS	19
SECTION 8 CONDITIONAL USE PERMITS	20
SECTION 9 VARIANCES	22
SECTION 10 AMENDMENTS	23
SECTION 11 COMPLAINTS & ENFORCEMENT	24
SECTION 12 APPEALS	25

SECTION 1: GENERAL PROVISIONS

Title, Purpose, Creation and Adoption

1.1 This Regulation shall be known as the East Gallatin Zoning Regulation (the “Regulation”) and is adopted for the East Gallatin Zoning District (the “District”). The Gallatin County Commission created the District on _____ under 76-2-201 MCA, in accordance with the Gallatin County Growth Policy (the “Growth Policy”). The regulations contained within consider the general character of the East Gallatin area and its particularly suitability for particular uses. The Regulation further considers the value of existing buildings, encouraging the most appropriate use of land throughout the jurisdictional area (76-2-203 MCA). The East Gallatin Zoning District Map accompanies this Regulation. The Official Map is kept in the Clerk & Recorder’s Office.

1.2 Purpose: The purpose of the District is achievement of the following goals:

- To preserve the present rural agricultural nature of the area. (Lands used for agriculture in accordance with 76-2-209 MCA are exempt from this Regulation. Nothing contained in this Regulation is intended to impede or regulate agricultural operations. Lands used specifically for agricultural, including agricultural uses and associated structures, are exempt from the provisions of this Regulation.
- To encourage appropriate development within the area and to discourage moderate-to high-density development within this historically rural and agricultural area.
- To preserve the natural environment of the area, including protection of wildlife and wildlife habitat along the East Gallatin River and its tributaries.
- To maintain and preserve the existing water aquifers and diminish the adverse impacts to them and area streams.
- To further implement the goals and policies of the Belgrade Area Master Plan and the County Growth Policy through comprehensive land use planning.
- Per 76-2-203 MCA, the Regulation has been designed to lessen road congestion; to secure safety from fire, panic and other dangers; to promote public health and general welfare; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, sewerage, schools, parks, and other public facilities.

1.3 District Character: The general character of the District is agricultural and rural residential. It is the intent of this District to maintain the existing character as much as possible while encouraging compatible developmental densities. The District is generally divided into a northern sector that is predominately agricultural and a southern sector that includes dispersed residential subdivision. To preserve the character, an average density of one residence per 20 acres is permitted throughout the District with clustered development encouraged. Straight 20-acre-lot development is generally discouraged, as is similar type development that may not use land in an efficient manner.

Increased density, up to a maximum density of one residence per five acres, may be permitted, granted such development meets the criteria described under Section 4.3, as well as the standards of the Gallatin County Subdivision Regulations and the Montana Subdivision & Platting Act.

- 1.4 Invalidation:** If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this Regulation or any attachments hereto is for any reason held to be unconstitutional or void, such decision shall not effect the validity of the remaining portions of this Regulation to render the same operative and reasonably effective for carrying out the purpose of this Regulation.

ADOPTION

The Commission adopted the East Gallatin Map and Zoning Regulation on
_____.

GALLATIN COUNTY COMMISSION

John Vincent, Chair

William A. Murdock, Member

Joe Skinner, Member

ATTEST:

Shelley Vance, Clerk and Recorder

SECTION 2: Application of District Regulations

- 2.1 Application.** The requirements established by this Regulation are minimum regulations and apply uniformly to each class or kind of structure or land throughout the District. Regulation provisions shall be held to the minimum that protects and promotes the public health, safety and general welfare of the District.

This Regulation includes a “grandfather clause” in accordance with Section 76-2-208, MCA, which allows existing non-conforming lots, structures, uses of land, and other characteristics which would otherwise be restricted or regulated under the terms of this Regulation, to continue as non-conforming. Property owners of legally existing non-conforming lots, structures, and uses of land may apply for a conditional use permit to change, alter, enlarge, and expand pursuant to Section 8.

- 2.2 Zoning Regulation Conformance.** All new construction is potentially subject to the provisions of this Regulation. Property owners are responsible for ensuring all activity within District boundaries conforms to this Regulation.

- 2.3 Exception.** Under certain circumstances, the Zoning Enforcement Agent may exempt public utility pipelines, wells, or structures necessary for provision of services required for public health and safety, from provisions of this Regulation.

- 2.4 Vesting.** An application made within the District is subject to the Regulation that is in effect at that time.

- 2.5 Contradictions.** If the requirements of this Regulation conflict with the requirements of any other lawfully adopted rules, regulations or covenants, the most restrictive (or higher standard) shall govern.

- 2.6 Interpretations.** The Zoning Enforcement Agent, Belgrade City-County Planning Board, the Board of Adjustment, and the Gallatin County Commission (Commission) can make official interpretations of the map and Regulation. If questions arise concerning the appropriate classification of a particular use, or if the specific use is not listed, the Commission and/or the Zoning Enforcement Agent shall determine the appropriate classification of that use.

In interpreting a use classification, the Commission and/or Zoning Enforcement Agent shall consider the matter in an office meeting and determine the use and its operation:

1. Is compatible with the uses permitted in the district.
2. Is similar to one or more uses permitted in the district.
3. Will not cause substantial injury to values of property in the neighborhood or district.
4. Will not abrogate the intent of the Growth Policy, the Belgrade Master Plan or this Regulation by such classification.

SECTION 3: ZONING DISTRICT PROVISIONS

Agricultural and Rural Residential District (AR)

- 3.1 Intent. The intent of this classification is to help maintain the overall character of the District described under Section 1.

Subdivision projects in the District should be clustered using innovative planned development strategies that maintain the District character and minimize the adverse impacts of residential development

3.2 Principal Uses

1. Single-family residences, one per existing lot.
2. Agricultural operations, including small-scale riding arenas and horse stables.
3. Accessory buildings, or structures customarily used in conjunction with permitted uses, except those listed as Conditional Use Permits.

3.3 Development Density.

1. One single-family residence per 20 acres or per tract of record by right, or one single-family residence per 5 acres as determined appropriate through the CUP process. This section does not dictate specific lot sizes, but instead establishes the obtainable density based on available acres. Smaller lots are preferred to help achieve efficient use of land.

Appropriate density is determined through the conditional use permit and subdivision review processes with consideration of the clustered development criteria described under Section 4.

2. New lots can be created through family transfer exemption per the Montana Subdivision & Platting Act. Family transfer lots are not subject to the density requirements of this Regulation.

- 3.4 Conditional Uses. Uses listed below, as well as uses not listed but are deemed similar to those listed (subject to “Interpretation of Use” provisions under Section 2), require a Conditional Use Permit (CUP).

Land uses requiring a CUP include the following:

- a. Clustered subdivisions with average densities under one residence per 20 acres.
- b. Bed and breakfast inns.
- c. Commercial development (not including home occupations).
- d. Gravel quarries, quarry operations and batch plants.
- e. Mineral extraction and oil and gas production and development.
- f. Mobile home parks.
- g. Campgrounds and recreational vehicle parks.
- h. Automobile, motorcycle, and ATV racing tracks and facilities.
- i. Telecommunication and utility facilities.
- j. Places of worship.
- k. Special event facilities and uses.
- l. Airport and heliports operations and facilities.
- m. Community residential facilities.
- n. Golf courses.
- o. Day care centers.
- p. Group homes.
- q. Schools.
- r. Public and private parks and playgrounds.
- s. Non-agricultural structures over 36 feet in height.
- t. Expansion, enlargements and/or extensions of non-conforming uses of land/ structures.
- u. Home-based business.
- v. Guest houses.
- w. Caretaker's residences

3.5 Signs. The following signs require a CUP:

- a. Billboards or off-premise advertising signs.
- b. Signs greater than eight square feet.

3.6 Land uses not requiring a CUP include the following:

- a. Agriculture and agriculture-related business and the sale of products produced thereon.
- b. Single-family dwellings and accessory structures.
- c. Home occupations
- d. Land divisions exempt from subdivision review under 76-3-201 (family transfers, boundary realignments, agricultural exemptions, etc.)

Neighborhood Commercial (NC) District

3.7 Intent. The intent of this classification is to allow certain appropriate, low-impact, light commercial uses that are deemed compatible with the general character of the District and with residential neighborhoods.

3.8 Principal Uses (uses allowed by right with no conditional use permit):

- a. Low-impact, light commercial uses.
- b. Landscaping businesses.
- c. Plant nursery
- d. Carpentry shop.
- e. Plumbing and electrical office.
- f. Private residential with multi use structures
- g. Home occupations
- h. Churches
- i. Mini-ware housing
- j. Veterinary clinic
- k. Day care center
- l. Welding shop
- m. Barber/beauty shop
- n. Upholstery shop
- o. Photography studio
- p. Bed and breakfast Inn
- q. Private garages
- r. Signs no larger than 2 feet by 4 feet.

3.9 Conditional Uses.

3.10 Setbacks.

- | | | |
|----|---------------|----------|
| a. | Front setback | 15 feet. |
| b. | Side setback | 10 feet. |
| c. | Rear setback | 15 feet. |

Commercial (C) District

3.11 Intent. The intent of this classification is to allow certain appropriate commercial uses that are deemed compatible with the general character of the District.

3.12 Principal Uses.

- a. Low-impact, light commercial uses.
- b. Light manufacturing.
- c. Wholesale businesses.
- d. Service and retail establishments.
- e. Mechanical and woodworking services.
- f. Sales establishments.
- g. Shopping-type establishments.

3.13 Conditional Uses.

3.14 Setbacks.

- | | | |
|----|---------------|----------|
| a. | Front setback | 15 feet. |
| b. | Side setback | 10 feet. |
| c. | Rear setback | 15 feet. |

SECTION 4: DEVELOPMENT STANDARDS

General Building and Development Standards

4.1 General. The Gallatin County Planning Department (the “Planning Department”) shall administer the provisions of this Regulation, with recommendations on development projects forwarded from the Belgrade City-County Planning Board to the Gallatin County Commission. The Zoning Enforcement Agent shall issue all LUPs and review all applications submitted to the County Commission for CUPs and amendments of this Regulation.

4.2 Appeals. Appeals from the decision of the Zoning Enforcement Agent concerning interpretation of this Regulation may be taken in writing to the County Commission. An appeal must be filed within 10 working days of the date of the written decision of the Zoning Enforcement Agent.

4.3 Subdivision Standards. Clustered development projects are encouraged within the District and additional density (more than one single-family residence per 20 acres can be obtained if a project meets the criteria below as determined through a CUP process.

Clustered development is defined as a development design technique that means a subdivision with lots clustered in a group designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

4.4 Clustered Development Criteria. All clustered subdivision projects within the District shall be designed with consideration of the following criteria administered through the CUP process:

- a.** Clustered developments shall generally include at least 60 percent dedicated open space. There is no minimum lot size. Large parcels, such as 20-acre “cookie-cutter” type development, are discouraged. Use of central water and/or sewer systems are encouraged where any individual lot in a clustered subdivision is less than one acre in size. Where all individual clustered lots are equal to or greater than one acre in size then central water or sewer are encouraged where onsite environmental characteristics of the proposed subdivision (such as depth to groundwater, groundwater availability, groundwater quantity, groundwater quality, soil types, soil characteristics and other subsurface factors) indicate central water or sewer systems are desirable. In all other instances it is encouraged that Level II individual wastewater treatment systems be utilized and individual wells be inspected and certified by licensed engineers prior to use.
- b.** Protection of riparian areas, including no subdivision within the 100-year floodplain. Density shall be limited in those areas adjacent to the floodplain deemed significant to wildlife.

- c. Subdivision development shall consider the compatibility of such development on adjacent properties, including impact to area agricultural operations. New development shall minimize adverse impacts of future development on such properties. Mitigation strategies shall include use of buffers, fencing, landscaping, lighting techniques, noise, as well as mitigation of other aspects which may interfere with adjacent properties.
- d. New subdivision development shall occur in areas of the District which can accommodate anticipated increases in traffic and that shall not promote an inefficient transportation system that places development far from needed services such as schools, stores, and emergency provisions. It is a goal of this District to encourage development near such services to reduce dependence on automobiles and take advantage of the existing road network (such as Springhill, Airport, Nelson, and Dry Creek roads). Use of trails, bike paths and other methods to reduce automobile traffic is encouraged and expected.
- e. Subdivision development shall make every attempt to minimize impact to area wildlife and wildlife habitat.
- f. Subdivision development shall make every attempt to preserve the rural character of the area through innovative and sensitive design techniques (such as constraints-based planning).

4.5 Bed and Breakfast Inn. All bed and breakfast inns shall be subject to the following standards:

- 1. The proprietor or operator shall reside in the bed and breakfast inn.
- 2. The number of bedrooms available for guests shall be five or fewer.
- 3. Food service shall be limited to breakfast, which may be served to overnight guests only, and shall be prepared from an on site, central kitchen facility.
- 4. There shall be no alteration to the exterior of the structure that would detract from the residential character. Any alteration to the exterior of the structure that is for the purpose of increasing the number of guest rooms shall be reviewed as a conditional use.
- 5. One parking space per guest room shall be provided, in addition to the two parking spaces required for a dwelling unit.

4.6 Home-based Business. A home-based business shall meet the following standards:

- 1. A home-based business shall be operated by a person residing within the dwelling.
- 2. No home-based business shall have more than three employees residing off-premises and may include contracting businesses; service businesses; offices; music, art, or other schools instruction; individual artist studios and galleries.

3. The home-based business shall not change the residential character of the lot or adversely affect adjacent properties or the uses permitted in the district.
4. All vehicles, materials, and solid waste related to the home-based business must be located within structures or screened from view.
5. All parking shall be provided on site.

4.7 Home Occupation. A home occupation shall met the following standards:

1. A home occupation shall be operated by a person residing within the dwelling.
2. Uses permitted are professional services such as accountant, physician, real estate agent; individual artist studios and galleries, handcraft studio, music studio, or similar studio uses; a tailor; repair of furniture and small appliances; tutoring or classes for no more than two students at one time; and counseling primarily for individual persons.
3. No one residing off premises may be employed on the premises of a home occupation for work related to the occupation.
4. All parking shall be provided on site.

4.8 Required Setbacks.

a. Required Setbacks:

1. Residential and commercial structures must be located outside the 100-year floodplain or at least setback 300 feet from the ordinary high water mark of the East Gallatin River in areas where the 100-year floodplain boundary is less than 300 feet from the ordinary high water mark.
2. Residential and commercial structures must be at least 150 feet from the high water mark of all other natural streams and creeks within the District.
3. Residential and commercial structures must be at least 50 feet from all irrigation ditches within the District.
4. Residential and commercial structures must be at least 100 feet from County-maintained roads within the District.

SECTION 5: ADMINISTRATION PROVISIONS

Administration

- 5.1** Intent. The intent of this Regulation is to regulate and promote orderly development.
- 5.2** Zoning Enforcement Agent. The Zoning Enforcement Agent supervises and enforces the provisions of this Regulation pursuant to Section 76-2-210, MCA. This consists of, but is not limited to, issuing land use permits, enforcing violations and reviewing applications for conditional use permits, variances, rezoning requests and amendments to the Regulation.
- 5.3** Advisory Committee. The Commission may create a non-remunerative advisory committee, of up to five members, to make recommendations within the District. Members are freeholders in the District. Advisory Committee members are appointed for two-year staggered terms. Initially, two members are appointed for one-year terms and three members are appointed for two-year terms.

Advisory Committee recommendations are advisory only and are not binding upon the Commission. Advisory Committee meetings are open to the public and noticed accordingly. The Advisory Committee may also notify the Zoning Enforcement Agent of alleged violations within the District.

- 5.4** Board of Adjustment. The Commission shall appoint a five-member Board of Adjustment (the “BOA”). The role of the BOA is:
1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Regulation.
 2. To hear and decide variances (special exceptions) to the Regulation that will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the regulations will result in an unnecessary hardship, and so that the spirit of the Regulation is observed and substantial justice done.

The BOA may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or administrative determination made by the Planning Director appealed and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all of the powers of the officer from whom the appeal is taken, (Section 76-2-223, MCA). The concurring vote of three members of the BOA shall be necessary to grant a variance, reverse any order, requirement, decision, or determination of any such administrative official (Section 76-2-224, MCA).

- 5.5** County Planning Board. The Belgrade City-County Planning Board (the “Planning Board”) consists of resident freeholders serving in an advisory capacity to the Commission. The Planning Board’s role is to make recommendations on the revision of boundaries and the amendment of regulations (Sections 76-2-204 and 76-2-205, MCA).
- 5.6** County Commission. The Commission reserves the right to, after public notice and hearing, deny, approve or conditionally approve all conditional use applications.
- 5.7** Administrative Appeals Process. Those aggrieved by Zoning Enforcement Agent’s decisions may submit written appeals specifying the grounds thereof to the BOA. Appeals must be filed within 10 working days of the Zoning Enforcement Agent’s written decision.
- Notice of the hearing shall be published once in a newspaper of general circulation at least 15 days prior to the hearing. The BOA will accept testimony at the hearing from persons interested in the appeal, the appellant and/or their attorney, and the Zoning Enforcement Agent.
- 5.8** BOA Appeals Process. Those aggrieved by the BOA’s decisions may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after filing the BOA’s minutes or decision in the Planning Department (Section 76-2-227, MCA).
- 5.9** Schedule of Fees. The Commission sets fees for all applications; including but not limited to land use permits, zone changes, conditional use permits, and variances. The Commission will not take action on an item until fees are paid in full. Fees are non-refundable.
- 5.10** Violations and Penalties. A violation of this Regulation, any condition imposed through the authority of this Regulation, or any variance granted through this Regulation is a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment in the county jail not exceeding six months or both (Section 76-2-211, MCA).

SECTION 6: Non-Conforming Lots, Uses and Structures

- 6.1** Intent. Within the District, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before this Regulation was adopted or amended, but which would be prohibited, regulated or restricted under terms of this Regulation or future amendments. It is the intent of this Regulation that non-conformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district, unless granted an approved conditional use permit.

Non-conforming uses are declared by this Regulation to be incompatible with permitted uses in the district involved. However, to avoid undue hardship, nothing in this Regulation shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction lawfully begun prior to the effective date of adoption or amendment to this Regulation and which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

A property owner may apply to change, alter, enlarge, or expand a non-conforming use or structure pursuant to the conditional use permit process.

- 6.2** Non-Conforming Parcels of Record. In any district, structures permitted in said district may be erected on any non-conforming parcel, which was of record on the effective date of this Regulation. All other requirements and restrictions of the district apply to a parcel of record that does not meet parcel area requirements.

A non-conforming parcel of land shall not be divided or changed in any way to reduce the area of the original parcel or increase its non-conformity.

- 6.3** Non-Conforming Uses of Land. Where at the time of the adoption of this Regulation lawful use of land exist which would not be permitted by this Regulation, the use may be continued so long as it remains otherwise lawful, provided:

1. A legal non-conforming use may only be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Regulation after being granted an approved conditional use permit.
2. A legal non-conforming uses may only be moved in whole or in part to any portion of the lot or parcel not occupied by such use at the effective date of adoption or amendment of this Regulation after being granted an approved conditional use permit.

3. If any such non-conforming use of land, with the exception of seasonal uses, ceases for any reason for a period of more than 12 months, any subsequent use of such land shall conform to the regulations classified by this Regulation for the district in which the land is located. If a seasonal use ceases for the use of two consecutive seasons, then subsequent use of such land shall conform to this Regulation.
4. Replacement of pre-existing non-conforming septic disposal drainfields shall be permitted provided that a permit is issued by the Gallatin City-County Health Department.
5. Any non-conforming use of land superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located and the non-conforming use may not thereafter be resumed.

6.4 Non-Conforming Structures. Where a lawful structure exists at the effective date of adoption or amendment of this Regulation that could not be built under the terms of this Regulation by reason of restriction on parcel, area, height, yards, its location on the parcel, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. A legal non-conforming structure may only be altered or enlarged which increases its non-conformity after being granted an approved conditional use permit. Any structure or portion thereof may be altered to decrease its non-conformity without a conditional use permit.
2. Should such non-conforming structure or non-conforming portion of a structure be destroyed by a catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and does not require prior approval by the Commission. Any use or structure which is not substantially the same as the original use or structure must conform with the applicable provisions of this Regulation and applicable federal, state, and local building codes.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations this Regulation.
4. Any legal non-conforming structure altered to conform to the regulations of the district in which it is located shall thereafter remain in conformance with the regulations.

6.5 Non-Conforming Uses of Structures. If a lawful use of a structure, or of structures and premises exist at the effective date of adoption or amendment of this Regulation that would not be allowed in the district under the terms of this Regulation, the lawful use may be continued so long as it remains otherwise lawful provided that:

1. An existing structure devoted to a legal non-conforming use may only be enlarged, extended, constructed, or structurally altered after an approved conditional use permit. A conditional use permit is not required to change the legal non-conforming use to a permitted use.

2. Any non-conforming use may be extended to any other part of a structure designed for such use, but no such use may be extended in any way to occupy land outside the structure without an approved conditional use permit.
3. Any legal non-conforming use superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located and the non-conforming use may not thereafter be resumed.
4. If a non-conforming use of a structure ceases for a period of more than 12 months, any subsequent use of such structure shall conform to the regulations of the district in which it is located. The period of cessation may be extended for one additional 12-month period with an approved conditional use permit.
5. If a non-conforming use is destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction. Reconstruction of a non-conforming use does not require prior approval of the Commission. Any use which is not substantially the same as the original use must conform with the applicable provision of this Regulation and applicable federal, state, and local building codes.

6.6 Repairs and Maintenance. On any non-conforming structure or portion of the structure containing a non-conforming use, work may be done on ordinary repairs and fixtures, wiring, plumbing, or repair or replacement of non-load-bearing walls, to the extent not to exceed 15 percent of the replacement value of the building in any one year, provided that such work does not increase the cubic content of the building. Nothing in this Regulation shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official or other person qualified to make such a declaration.

6.7 Determination of Status of Non-Conforming Land Uses and Structures. It shall be the responsibility of the Zoning Enforcement Agent to determine the status of non-conforming land uses and structures. If the Zoning Enforcement Agent determines that a use or structure meets the applicable criteria in this Regulation and above, the use or structure shall be deemed an Approved Non-Conforming Land Use or Approved Non-Conforming Structure. The following procedures shall be followed to determine the status of non-conforming land uses and structures.

1. The owner of record of the subject use or structure shall make an application for a determination of the status of a land use or structure.
2. It shall be the burden of the applicant to prove entitlement to approved non-conforming status by furnishing the Zoning Enforcement Agent with a preponderance of supporting information. Such information shall include, but not be limited to, septic or sewer hook-up permits, building permits, business licenses and dated photographs.

3. The Zoning Enforcement Agent shall determine on a case-by-case basis whether a land use or structure is an existing non-conforming use or existing non-conforming structure.
4. Appeals of the Zoning Enforcement Agent's decision may be made in accordance with the provisions of the Administrative Appeals Process.
5. The Zoning Enforcement Agent shall maintain a record of existing non-conforming uses and structures as such information becomes available.

SECTION 7: Land Use Permits

- 7.1** Intent. A Land Use Permit (LUP) is required prior to construction of most structures within the District. An approved LUP shows conformity with Regulation requirements.
- 7.2** Process. Landowners shall submit LUP applications (with accompanying fee) to the Planning Department for new structures as defined by this Regulation. The Zoning Enforcement Agent inspects applications to determine if projects comply with provisions of this Regulation.
- 7.3** Exempt Structures. Qualified structures used exclusively for agricultural purposes (and agricultural accessory structures with no size limitation) are exempt from the LUP requirements; however all accessory structures must comply with the setback requirements.
- 7.4** Septic Permits. Landowners shall provide proof of septic or sewer permits with those projects which contemplate new facilities or extension of existing facilities.
- 7.5** Appeals. Appeals of Zoning Enforcement Agent decisions may be submitted under the Administrative Appeal Process.
- 7.6** Expiration. Land Use Permits expire if building or work authorized by the permit has not commenced within 12 months from the original permit date and if work authorized by the permit is not completed within 24 months of the original permit issuance date. Landowners must obtain a new permit, to re-commence work.

SECTION 8: Conditional Use Permits

- 8.1** Intent. A Conditional Use Permit (CUP) is required prior to operation of a use that is not a principal use, but allowed conditionally under this Regulation.
- 8.2** Requirements. Structures or land within the District may not be used for any purpose unless such use is specifically listed as a principal use or conditional use in this Regulation. The Commission may grant a conditional use for CUP when they find:
1. The use conforms to the objectives of the Gallatin County Growth Policy and the intent of this Regulation.
 2. The use will not adversely affect nearby properties or their occupants.
 3. The use meets density, and all other regulations of the district in which it is located, unless otherwise provided in this Regulation.
 4. A public hearing, after notice has been given, has been held.
- 8.3** Conditional Approval. The Commission may make the granting of a CUP subject to reasonable limitations or conditions as it may deem necessary to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area or to make it more acceptable in other ways. The conditions may include but not be limited to the following:
- b. Regulation of vehicular ingress and egress.
 - b. Regulation of right-of-way.
 - c. Setbacks.
 - d. Lighting.
 - e. Noise.
 - f. Dust.
 - g. Erosion.
 - h. Water quality and quantity.
 - i. Regulation of time of activities that have off-site impacts.
 - j. Landscaping and its maintenance thereof.
 - k. Regulation of placement of uses on the property.
 - l. Regulation of the nature and extent of use.
 - m. Regulation of the length of time such use may be permitted.
 - n. Regulation of noxious weeds.
 - o. Regulation of public safety measures, including fire protection.
- 8.4** Procedure. All CUP applications shall be submitted to the Planning Department on the required form with the accompanying fee. A public hearing on the matter is scheduled before the Commission and they shall either approve or deny the application based on the facts. The Commission may impose reasonable conditions, as it may deem necessary to mitigate project impacts. Use cannot commence until all conditions have been met.

- 8.5** Notice. Notice of the public hearing shall be published at least once 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.
- 8.6** Issuance of Land Use Permit (LUP). No LUP shall be issued other than in accordance with the conditions and terms of the CUP. No LUP shall be issued until time for appeal on a CUP has elapsed, or if an appeal has been filed, the appeal has been decided.
- 8.7** Revocation or Modification. The Commission may revoke or modify a CUP under the following circumstances (under the procedure described above):
1. If circumstances have changed substantially since original approval.
 2. Revocation or modification is necessary to protect the health, safety, or welfare of the area, or is necessary to preserve the integrity of existing use patterns in the area.
 3. The person holding the permit has not complied with the required conditions, or has not materially changed their position by detrimentally relying on said permit.
- 8.8** Expiration/Extensions. The Commission may issue a CUP for a definite term. Extensions can be obtained through written application made 30 days prior to expiration, with accompanying fee, and notification sent to adjacent property owners. An extension shall be granted if no objection is received. A public hearing will be held if objection is received.

SECTION 9: Variances

- 9.1** Intent. It is the intent of this section to provide a process for relief from the occasional inequities created by the physical standards of this Regulation when such standards create a substantially unequal burden on a particular parcel of land in a fashion that would otherwise prevent the reasonable use of the property owing to physical circumstances unique to that parcel. In addition, the intent of this section is to prohibit the granting of variances that would be contrary to the public interest and endanger public health, safety and welfare. No variance shall be granted to allow the use or development of property for a purpose not authorized within the zone in which the proposed development would be located.
- 9.2** Criteria. In granting a variance, the BOA shall issue findings setting forth factual evidence that the variance:
1. Will observe the intent and purpose of this Regulation, including the Gallatin County Growth Policy, and do substantial justice.
 2. Will not be injurious to the public health, safety, and general welfare.
 3. Will not be contrary to and will serve the public interest.
 4. Is necessary, owing to conditions unique to the property, to avoid unnecessary hardship which would unavoidably result from the enforcement of the literal meaning of this Regulation:
 - a. Hardship does not include difficulties arising from actions, or otherwise be self-imposed, by the applicant or previous predecessors in interest, or potential for greater financial returns; and
 - b. Conditions unique to the property may include, but are not limited to, slope, presence of watercourses, after the fact imposition of additional regulations on previously lawful parcels, and governmental actions outside of property owner's control.
 5. Is the minimum relief necessary to provide reasonable use of the property.
- 9.3** Procedure. All variance applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the BOA, and the BOA shall either approve or deny the application based on the facts. The BOA may impose reasonable conditions, as it may deem necessary to mitigate project impacts. The concurring vote of three members of the BOA shall be necessary to decide in favor, wholly or partly, of any variance from this Regulation.
- 9.4** Notice. Notice of the public hearing shall be published at least once 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.

SECTION 10: Amendments

- 10.1** Intent. This Regulation and the boundaries of the zoning map may be amended or revised whenever the public health, safety and general welfare requires such amendment. Amendments shall follow the procedure prescribed by Section 76-2-201 et seq., MCA and this Regulation.
- 10.2** Procedure. An amendment may be initiated by submittal of one of the following to the Planning Department:
1. The petition of one or more landowners in the District. The petition shall be filed on the required application and accompanied by the required fee.
 2. Resolution of intention of the Commission.
 3. Resolution of intention of the Planning Board.
- 10.3** Planning Board. The Planning Board shall make recommendations on the revision of boundaries and the amendment of the Regulation to the Commission.
- 10.4** Hearing. The Commission shall consider all proposed amendments at a public hearing. The Commission may adopt the amendment in accordance with the procedure prescribed by Section 76-2-205, MCA.
- 10.5** Notice. Notice of the public hearing shall be published in a newspaper of general circulation pursuant to Section 76-2-205, MCA.

SECTION 11: Complaints and Enforcement

11.1 Intent. It is the duty of the Planning Board, the Commission, its officers, agents and employees to enforce the provisions of this Regulation.

11.2 Complaints. Any person may file a signed, written complaint with the Zoning Enforcement Agent and/or Code Compliance Specialist addressing a violation of this Regulation. The complaint shall fully describe the facts supporting the complaint.

Upon receipt of a written, signed complaint, the Zoning Enforcement Agent and/or Code Compliance Specialist shall record and investigate the complaint and determine if a violation exists. If the Zoning Enforcement Agent and/or Code Compliance Specialist determine a violation exists, then they shall take the appropriate action to resolve the violation. The name of the person filing the complaint shall remain confidential until the violation is resolved and/or there is a public hearing on the matter.

Upon receipt of any anonymous or verbal complaint, the Zoning Enforcement Agent and/or Code Compliance Specialist shall investigate the complaint, and may take action as time permits.

11.3 Investigations. When investigating an alleged violation, the Zoning Enforcement Agent and/or Code Compliance Specialist shall review this Regulation and other applicable public information regarding the alleged violation. The Zoning Enforcement Agent and/or Code Compliance Specialist may perform an inspection of the alleged violation from a public road or from a neighboring property where permission has been granted for access. The Zoning Enforcement Agent and/or Code Compliance Specialist may also notify the alleged violator, and request access for an inspection. If access is denied, the investigator may seek an administrative warrant. Permission for access is assumed in the event an alleged violator has a pending permit application on file with the Planning Department. The investigator shall document the inspection with written notes and/or photographs as appropriate.

11.4 Administrative Remedies. Pursuant to MCA § 76-2-210, and with reasonable cause, the Zoning Enforcement Agent and/or Code Compliance Specialist may revoke any land use permit, issue cease and desist orders requiring cessation of any building, moving, alteration or use which is in violation of the regulation, and/or require mitigation and/or corrective action, including, but not limited to, dismantling or removal of non-complying structures, to remedy the violation.

11.5 Administrative Fine. In addition to the above, and upon a recommendation from the Zoning Enforcement Agent and/or Code Compliance Specialist, the County Commission may, after a public meeting, assess violators fines of up to \$500 per violation for noncompliance. Each day of violation may be considered a separate offense. When determining the amount and duration of a fine, the Commission shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice

may require. In addition, the violator may be required to pay administrative costs. If the fine is not paid, it shall become a lien upon the property.

- 11.6 Criminal Penalty.** Pursuant to MCA § 76-2-211, a violation of this Regulation, a permit issued under this Regulation, any condition imposed through the authority of this Regulation, or any variance granted through this Regulation shall constitute a misdemeanor. A violator may be imposed a fine up to a maximum of \$500 per violation, or imprisoned in the county jail for a term not to exceed six months, or both.
- 11.7 Injunction.** After the exhaustion of administrative remedies, the County Attorney, in conjunction with the Zoning Enforcement Agent and/or Code Compliance Specialist, may bring an action in the name of the County of Gallatin in the District Court to enjoin any violations of this Regulation.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent or other person/entity who commits, participates in, assists or maintains such violation may each be held accountable for a separate violation.

- 11.8 Remedies/ Cumulative.** The remedies provided for herein shall be cumulative and not exclusive.

SECTION 12: Appeals

- 12.1 Appeals to the Board of Adjustment.** Pursuant to MCA§ 76-2-226, those aggrieved by the Zoning Enforcement Agent's and/or Code Compliance Specialist's decisions may submit written appeals specifying the grounds thereof to the BOA. Appeals must be filed within 30 days of the Zoning Enforcement Agent's and/or Code Compliance Specialist's written decision. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Enforcement Agent and/or Code Compliance Specialist determines that a stay could cause imminent peril to life or property.

Upon receipt of a written appeal, a public hearing shall be scheduled before the Board of Adjustment for its next available meeting date. Notice of the hearing shall be published once in a newspaper of general circulation at least 15 days prior to the public hearing. The BOA will accept testimony at the hearing from persons interested in the appeal, the appellant and/or their attorney, and the Zoning Enforcement Agent and/or Code Compliance Specialist.

- 12.2 **Board of Adjustment Appeals to District Court.** Pursuant to MCA § 76-2-227, those aggrieved by the BOA's decisions may present to the Eighteenth Judicial District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after filing the BOA's minutes or decision in the Planning Department.
- 12.3 **County Commission Appeals to District Court.** Those aggrieved by a decision made by the County Commission may present to the Eighteenth Judicial District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days upon receipt of the written decision made by the Commission at a public hearing.

Definition of Agriculture:

See Montana Code Annotated: 15-1-101. Definitions.
15-7-202. Eligibility of land for valuation as agricultural.

f:\plan\zoning district regulations\E.G.East Gallatin-proposed\Reg.fn